

10:12:56 1 UNITED STATES DISTRICT COURT
10:12:56 2 SOUTHERN DISTRICT OF OHIO
10:12:56 3 WESTERN DIVISION
10:12:56 4 - - - - -
10:12:56 5 ESTATE OF ROGER D. :
10:12:56 6 OWENSBY JR., et al., :
10:12:56 7 :
10:12:56 8 Plaintiffs, :
10:12:56 9 vs. : Case No. 01-CV-769
10:12:56 10 : (Judge S. A. Spiegel)
10:12:56 11 CITY OF CINCINNATI, :
10:12:56 12 et al., :
10:12:56 13 :
10:12:56 14 Defendants. :
10:12:56 15 - - - - -
10:12:56 16
10:12:56 17 Deposition of ROBERT B. HEILAND JR.,
10:12:56 18 defendant herein, called by the plaintiffs for
10:12:56 19 cross-examination, pursuant to the Federal Rules of
10:12:56 20 Civil Procedure, taken before me, Wendy Davies
10:12:56 21 Welsh, a Registered Diplomate Reporter and Notary
10:12:56 22 Public in and for the State of Ohio, at the offices
10:12:56 23 of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
10:12:56 24 Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Wednesday, December 3, 2003, at 10:10 AM.
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10:32:39 1 around the front of the cruiser. And by the time I
10:32:42 2 got to the front corner, the passenger's side, I saw
10:32:48 3 a Huntington Meadows security guy waiving me down
10:32:53 4 like everything was okay, slow down.

10:32:55 5 Q. That's what you understood it to mean?

10:32:57 6 A. That's what I understood it to mean.

10:33:00 7 Q. Okay.

10:33:00 8 A. So I stopped at the front of my cruiser
10:33:03 9 and I saw some distance away the rear passenger's
10:33:15 10 side of a car, two police officers, and who I now
10:33:21 11 know to be Roger Owensby laying on the ground.

10:33:25 12 Q. Okay. Go ahead.

10:33:27 13 A. Did I answer your question?

10:33:28 14 Q. No. When you said two police officers,
10:33:31 15 and then you said Owensby, I thought obviously he
10:33:35 16 was not one of the police officers. Okay.

10:33:38 17 A. He appeared to be handcuffed, to me. And
10:33:43 18 there was one on each side of him.

10:33:45 19 Q. Can you clarify that for a second? He
10:33:47 20 appeared to be handcuffed? When you say "to me,"
10:33:52 21 you mean it appeared to you that he was handcuffed?

10:33:56 22 A. It appeared to me --

10:33:57 23 Q. That he was handcuffed?

10:33:58 24 A. -- that he was handcuff.

10:34:01 1 Q. All right.

10:34:01 2 A. And there was a police officer on each
10:34:02 3 side of him, there was a few people around. And one
10:34:18 4 of the officers asked if they could put him in my
10:34:20 5 cruiser.

10:34:21 6 Q. When that question was asked where was Mr.
10:34:24 7 Owensby?

10:34:28 8 A. Mr. Owensby was still on the ground or
10:34:32 9 they were in the process of picking him up.

10:34:35 10 Q. Picking him up? Okay. Go ahead.

10:34:37 11 A. I said, "Sure." They picked him up, one
10:34:41 12 on each side, under each arm, and brought him to my
10:34:47 13 cruiser. I opened the rear passenger door and they
10:34:56 14 placed Mr. Owensby in the back of my car.

10:35:09 15 Q. Let me show you what's previously been
10:35:12 16 marked as Exhibit 9. Do you recall whether or not
10:35:41 17 that is a photograph of the car that the officers
10:35:50 18 and Mr. Owensby were near when you pulled in?

10:36:05 19 A. I don't recall what type of car it was. I
10:36:10 20 can't see the background in the picture.

10:36:14 21 Q. As perspective goes, this is taken from
10:36:18 22 the entrance of the convenience store looking out.

10:36:22 23 A. Having said that, then they would have
10:36:25 24 been at the rear of this car.

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11:11:15 1 A. That's correct.

11:11:16 2 Q. Could you tell whether or not, as they

11:11:38 3 approached you and your car, whether or not Mr.

11:11:43 4 Owensby was unconscious?

11:11:49 5 A. I couldn't tell.

11:11:53 6 Q. I take it you did not check?

11:11:56 7 MR. WEISENFELDER: Objection.

11:11:57 8 Go ahead.

11:11:58 9 A. I did not.

11:12:05 10 Q. So am I correct in understanding that when

11:12:08 11 Jorg and Caton placed Mr. Owensby in your car you

11:12:13 12 did not know the condition of Mr. Owensby at that

11:12:15 13 time?

11:12:18 14 A. I did not know.

11:12:19 15 Q. The physical condition of Mr. Owensby?

11:12:21 16 A. I did not.

11:12:22 17 Q. You did not know whether or not he was

11:12:24 18 conscious or unconscious?

11:12:26 19 A. I did not.

11:12:29 20 Q. As I understand it, after you opened the

11:12:31 21 door Officer Jorg and Caton put Owensby in the back

11:12:41 22 seat and then Caton went around to the driver's side

11:12:44 23 to pull Owensby into the back seat; is that right?

11:12:48 24 A. He did go around to the other side to

12:06:23 1 Q. Do you know whether or not Golf Manor had
12:06:25 2 a policy or guidance for its officers on November 7,
12:06:29 3 2000 to address the situation where a Golf Manor
12:06:34 4 officer is asked to give permission to place a
12:06:41 5 person who has been arrested by another police
12:06:44 6 department in a Golf Manor cruiser?

12:06:47 7 MR. WEISENFELDER: Objection.

12:06:48 8 Go ahead, you can answer.

12:06:50 9 A. I knew at that time, based on working,
12:06:57 10 training, that we could go over to other departments
12:07:00 11 and assist them with whatever they needed.

12:07:06 12 Q. I don't mean to cut you off.

12:07:07 13 A. That's okay.

12:07:08 14 Q. That was this mutual aid agreement that
12:07:13 15 was signed by the various police departments in the
12:07:17 16 greater Cincinnati area?

12:07:18 17 A. Correct.

12:07:19 18 Q. Other than knowing that you could assist
12:07:26 19 other police departments, do you know whether or not
12:07:29 20 there was any policy or guidance or custom in place
12:07:33 21 at Golf Manor to address what an officer's duties
12:07:40 22 and responsibilities were where another police
12:07:43 23 department asked him to place their prisoner in his
12:07:49 24 car?

12:07:52 1 A. When we would respond to a scene to assist
12:07:56 2 another department we would be under their command,
12:07:59 3 no matter what the rank. If you pull up on the
12:08:02 4 scene you assist them in how they need you to
12:08:07 5 assist.

12:08:08 6 Q. Did you have an understanding as to
12:08:10 7 whether or not you would, in this situation,
12:08:15 8 November 7, 2000, when you responded to the Sunoco
12:08:18 9 station, did you understand that you were assisting
12:08:22 10 the Cincinnati Police Department?

12:08:26 11 A. Yes. The assistance call came out.
12:08:29 12 That's why I was there.

12:08:31 13 Q. In responding to this assistance call, did
12:08:37 14 you understand that you would be subject to the
12:08:42 15 rules, policies, and customs of the Cincinnati
12:08:45 16 Police Department or the Golf Manor Police
12:08:50 17 Department?

12:08:51 18 A. My understanding was I would be there at
12:08:54 19 the scene to assist them how they needed me to.

12:08:58 20 Q. But what rules governed your conduct? Was
12:09:01 21 it Golf Manor or was it Cincinnati Police
12:09:03 22 Department?

12:09:05 23 MR. WEISENFELDER: Objection.

12:09:06 24 Go ahead.

12:09:07 1 Q. If you know.

12:09:09 2 A. I don't know.

12:09:12 3 Q. Do you recall receiving any instruction or
12:09:16 4 guidance concerning what rules a Golf Manor officer
12:09:19 5 had to follow when he was in this situation of
12:09:23 6 assisting another police department?

12:09:29 7 A. Through working with other officers in
12:09:33 8 field training and going to other scenes and other
12:09:37 9 departments, I just understood that we were under
12:09:41 10 their direction for as long as they needed
12:09:43 11 assistance and that was it.

12:09:49 12 Q. Did you have any understanding that you
12:09:51 13 would be bound -- or whether or not you would be
12:09:54 14 bound by the policies, rules, and regulations of the
12:09:59 15 Cincinnati Police Department if you were assisting
12:10:00 16 the Cincinnati Police Department?

12:10:05 17 A. I didn't know.

12:10:06 18 Q. You didn't know?

12:10:07 19 A. I didn't -- at that time I don't -- I
12:10:18 20 don't know.

12:10:18 21 Q. And as I take it at that time you had
12:10:18 22 received no instruction on whether or not you were
12:10:20 23 bound by, say in this case, Cincinnati's rules and
12:10:24 24 regulations or continued to be bound by Golf Manor's

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12:11:47 1 police force but placed in your cruiser?

12:11:50 2 MR. WEISENFELDER: Objection.

12:11:51 3 Go ahead.

12:11:52 4 A. My understanding at that time is I would
12:11:55 5 be responsible for my prisoners, anybody that was in
12:11:59 6 my custody. If somebody is not my prisoner, not in
12:12:03 7 my custody, then on the assistance call if somebody
12:12:10 8 puts their prisoner in the back of my car, they
12:12:13 9 asked to put them in the back of my car and I'm
12:12:17 10 there for assistance. It's their prisoner and it's
12:12:19 11 in their custody. So it's their responsibility.

12:12:29 12 Q. Did you have any understanding that by
12:12:32 13 accepting the prisoner and placing him in the back
12:12:35 14 seat of the Golf Manor cruiser that the prisoner was
12:12:39 15 now in your custody?

12:12:41 16 MR. WEISENFELDER: Objection as to the
12:12:44 17 word "accepting."

12:12:45 18 Go ahead and answer.

12:12:46 19 A. No.

12:12:51 20 Q. Did you receive any training as to the
12:12:54 21 distinction we've just been talking about, that
12:12:57 22 whether or not a prisoner placed in a Golf Manor car
12:13:01 23 from another jurisdiction, as to who had custody of
12:13:06 24 the prisoner?

12:13:11 1 A. From going to other calls and seeing it
12:13:13 2 done before, the prisoner's always the arresting
12:13:17 3 officer's or the agency's jurisdiction where you're
12:13:21 4 at.

12:13:21 5 Q. You had had this arise in the past?

12:13:25 6 A. I have seen it done on other calls.

12:13:30 7 Q. Before November 7, 2000?

12:13:36 8 A. I don't recall exact dates, but, yeah.

12:13:39 9 Q. But before the night of November 7, 2000;
12:13:42 10 is that right?

12:13:42 11 A. Yes.

12:13:53 12 Q. Did you feel that you had any
12:13:54 13 responsibility for the well-being of Mr. Owensby?

12:13:56 14 A. No.

12:13:56 15 MR. WEISENFELDER: Objection.

12:13:58 16 Go ahead.

12:14:06 17 Q. Regardless of who is technically
12:14:08 18 responsible for the well-being of a prisoner, if you
12:14:11 19 know that a prisoner is injured and needs medical
12:14:14 20 attention, is it your understanding that you have a
12:14:17 21 duty to provide medical attention?

12:14:25 22 A. Yes.

12:14:26 23 Q. You knew that this person, Mr. Owensby,
12:14:31 24 had blood around his nose and mouth; is that right?

12:44:21 1 Police Department however they needed.

12:44:24 2 Q. You see that it says the same duties as if
12:44:29 3 taking action within the territory of Golf Manor.

12:44:35 4 A. Yes.

12:44:36 5 Q. If you were responding in the territory of
12:44:46 6 Golf Manor to the arrest of Mr. Owensby would you
12:44:53 7 have been responsible for his well-being?

12:44:58 8 A. If he was my prisoner --

12:45:00 9 MR. WEISENFELDER: Objection.

12:45:00 10 Go ahead.

12:45:01 11 A. If he was my prisoner, yes.

12:45:09 12 Q. If he was not your prisoner, but you were
12:45:14 13 located in Golf Manor and he was placed in your car,
12:45:21 14 would you have been responsible for his well-being?

12:45:25 15 MR. WEISENFELDER: Objection.

12:45:25 16 Go ahead.

12:45:37 17 A. No.

12:45:37 18 Q. Why not?

12:45:41 19 A. Because he wasn't my prisoner. Unless the
12:45:45 20 arresting officer specifically asked me, "Can you
12:45:58 21 keep an eye on my prisoner for me? I've got to go
12:45:58 22 here."

12:45:58 23 Q. Say this takes place in Golf Manor and the
12:45:59 24 arresting officer is Officer Campbell, and you show

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14:05:56 1 officer is to remain with the cruiser if a
14:05:59 2 handcuffed person is inside. Do you know what
14:06:02 3 policy that is, which one of the Golf Manor
14:06:08 4 policies?

14:06:08 5 A. It's 6-07. I don't know. I think it's
14:06:18 6 one of them that was passed out.

14:06:20 7 Q. The prisoner transportation one?

14:06:22 8 A. Yes.

14:06:26 9 Q. Is that what you were talking about, the
14:06:28 10 policy about you had to remain at the cruiser if a
14:06:32 11 handcuffed person was inside?

14:06:35 12 A. Yes.

14:06:35 13 Q. I think you've indicated that that policy
14:06:38 14 didn't apply in this particular case because this
14:06:41 15 was not your prisoner and you were not going to
14:06:44 16 transport him?

14:06:45 17 MR. MARTINS: Objection.

14:06:46 18 MR. WEISENFELDER: Go ahead.

14:06:46 19 A. Correct. He was not my prisoner and I was
14:06:49 20 not going to transport him.

14:07:06 21 Q. Did you see, from the time that you
14:07:08 22 arrived until you left the scene, did you see any
14:07:13 23 Cincinnati police officer strike Mr. Owensby in any
14:07:15 24 way?

14:07:16 1 A. No.

14:07:35 2 Q. Did you believe that Roger Owensby was

14:07:37 3 unconscious when he was placed in your vehicle?

14:07:40 4 MR. WEISENFELDER: Objection.

14:07:41 5 Go ahead.

14:07:42 6 A. No.

14:07:43 7 Q. Would you have allowed them to place him

14:07:45 8 in your vehicle if you had thought he was

14:07:48 9 unconscious?

14:07:50 10 MR. WEISENFELDER: Objection.

14:07:51 11 Go ahead.

14:07:51 12 A. No.

14:07:52 13 Q. Would you have allowed them to place him

14:07:55 14 in the vehicle if you thought he was seriously

14:07:56 15 injured?

14:07:58 16 MR. WEISENFELDER: Objection.

14:07:59 17 Go ahead.

14:07:59 18 A. No.

14:08:00 19 Q. With respect to the time that you went

14:08:04 20 over to the car to look in, do you recall that

14:08:07 21 testimony, where at some point after he was placed

14:08:12 22 in the car you returned to the car to look in it?

14:08:15 23 A. Yes, sir.

14:08:15 24 Q. You said you didn't use your flashlight.